

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD B
AT HYDERABAD

ORIGINAL APPLICATION NO. 635/95

DATE OF ORDER : 7th August 1998

Between :-

Bibhishan Padhan

And

... Applicant

The Central Provident Fund Commissioner
Employees' Provident Fund Organisation,
9th Floor, Mayur Bhavan, Connaught
Circus, New Delhi: 110 001.

... Respondents

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Counsel for the Applicant : Shri N. Ram Mohan Rao

Counsel for the Respondents : Shri R. N. Reddy, CGSC

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CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B. S. JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri B. S. Jai Parameshwar, Member (J)).

(Order per Hon'ble Shri B. S. Jai Parameshwar, Member (J)).

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(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J)).

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Heard Sri N.Ram Mohan Rao, counsel for the applicant.

None for the respondents.

2. Since the OA was filed about 3 years back we felt not inclined to grant adjournment. Hence we are disposing of the OA in accordance with the rule 16(2) of the CAT (P), Rules, 1987.

3. This is an application under section 19 of the A.T.Act, 1985 and application was filed on 4-5-95.

4. The applicant submits that he belongs to ST community. The applicant while working as an Officer in the State Bank of India submitted his candidature in response to the advertisement issued by the Union Public Service Commission for the post of Asst. Provident Fund Commissioner Gr.I. The applicant appeared for interview on 13-2-90. The applicant was appointed as Asst.Provider Fund Commissioner Gr.I in the scale of pay of Rs.2200-4000 in the P.F.Organisation. He reported for duty on 17-12-90. He underwent training for a period of one month and was posted to Hyderabad.

5. The applicant submits that the post of Asst.Provident Fund Commissioner is filled by two methods which are as follows :-

(a)Direct Recruitment through UPSC;

(b)By promotion.

6. The applicant submits that the vacancies to be filled by the direct recruitment were lying vacant. He submits that there was direct recruitment. during the year 1989/ He submits that he should be regarded as



batch
1989/officer as the process has already been initiated during
February, 1989.

7. At this stage it must be noted that the organisation not only initiated the process for filling up the posts of Asst. Provident Fund Commissioner Gr.I by direct recruitment but also by promotion during the year 1991.

8. The applicant submits that a provisional seniority list of Asst.Provident Fund Commissioner Gr.I as on 1-1-93 was published through proceedings dt.20-1-93. He submits that seniority of Officers in the list from Sl.No.1 to 95 was fixed in accordance with the Employees Provident Fund Seniority Regulations, 1989 in short ~~the~~ "Regulations, 1989" applying quota-rota rule between Direct Recruits and promotees. He submits that officials shown at Sl.No.1 to 95 in the seniority list were appointed/promoted prior to the Regulations 1989. The claim of the applicant was shown in the seniority list at Sl.No.201.

9. He submitted representation dt.9-2-93 against the provisional seniority list. The applicant submits that he had raised the plea that he was a direct recruit and he cannot be incorporated as ^{were} junior to the employee who/promoted after his recruitment. He submits that approval for promotion by the UPSC made only on 21-9-91. Hence promotees cannot be ranked seniors to Direct Recruits. Thus the applicant claims to be senior to the promotees. However, his representation was not considered by the organisation. He submitted a reminder on 26-5-94 also.

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10. The applicant submits that the respondents instead of finalising the provisional seniority list issued through proceedings dt.20-1-93 circulated another provisional seniority list through proceedings dt.7-12-94. He submits that this seniority list of Asst.Provident Fund Commissioners Gr.I contains the officers who are on rolls as on 31-12-88. As the applicant was appointed in the year 1990, his name did not find a place in the said provisional seniority list.

11. He submits that the Chief Provident Fund Commissioner without finalising seniority of Asst.Provident Fund Commissioner, Gr.I issued proceedings dt.16-2-95 and dt.22-3-95 promoting 11 officers and 13 officers respectively, to the next higher grade.

12. He is aggrieved by the promotion of certain officers through proceedings dt.16-2-95 and 22-3-95.

13. Hence he has filed this OA for the following reliefs :-

(a) Direct the respondent to forthwith finalise the seniority list of Asst.Provident Fund Commissioners circulated by him through his proceedings PERS.I/S-3(2)/91 dt.20-1-93 duly revising it in such a way that the direct recruits of 1990 batch are not treated and shown as juniors to those who have been regularly promoted as Asst.Provident Fund Commissioners subsequent to the appointments of Direct Recruits;

(b) also direct the respondent to first of all identify the vacancies available for the respective quota viz., direct recruits and promotees and to push down all the promotees who have been so promoted in excess of their quota without in any manner rotating their names along with the direct recruits in the seniority list;

(c) and to direct the respondents to finalise and publish such a seniority list within a period of one month and;



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(d) on the above basis direct the respondent herein to review promotions ordered to the category of Regional provident Fund Commissioner Gr.II through his proceedings dt.16-2-95 and 23-3-95, respectively and declare that the applicant is entitled to be treated to have been so promoted with all consequential benefits such as pay fixation, seniority, payment of arrears of salary and allowances in the category of Regional Provident Fund Commissioner Gr.II;

(e) Call for the records relating to the memorandum No.Pers.I/S-3(2)91/SL/Vol.I/22603 dt.19-6-97 as well as the proceedings No.Pers.I/S.3(2)91/SL/Vol.I/25424 dt.30-6-97 of the respondent and set aside the same holding it arbitrary, unjust and declare that the applicant is entitled to be shown as senior to those who earned promotion as Asst.Provident Fund Commissioner subsequent to his appointment.

14. The respondents have filed a counter stating that during the year 1991 process for filling up the posts of Asst.Provident Fund Commissioner Gr.I by Direct Recruitment as well as by promotion was taken up. They submit that the seniority list as on 1.1.93 was finalised by fixing the quota of officers recruited by Direct Recruitment and promotees applying the principles of rota-quota. They submit that during the same financial year i.e. from 1-4-90 to 31-3-91 certain departmental officers were also promoted to the post of Asst.Provident Fund Commissioner against departmental quota on the recommendations of DPC/UPSC. The contention of the applicant that he was appointed during the December, 1990 and the departmental candidates were appointed during the January, 1991 and thus his contentions ~~xx~~ that he belongs to 1990 batch and the promotees belong to 1991 batch is not correct. The organisation is following financial year from April to March for the purpose of recruitment and they have followed the same in accordance

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with the instructions issued by DOPT. Therefore the officers appointed by Direct Recruitment as well as promotees were appointed during the same financial year i.e. 1-4-90 to 31-3-91. That the organisation has already fixed and finalised seniority in accordance with the rules and that the applicant was assigned slots according to the ranking made by the Asst. Provident Fund Commissioner. No injustice has been caused to the applicant. That the applicant is getting all the benefits such as promotion to next higher grade in accordance with the seniority and that the organisation followed the instructions of Department of Personnel & Training while fixing seniority and others in the cadre of Asst. Provident Fund Commissioner Gr.I. Therefore, the OA is liable to be dismissed.

15. The applicant in the OA is a direct recruit to the post of Asst. Provident Fund Commissioner. He reported for duty on 17-12-90. His main grievance is that his seniority in the cadre of Asst. Provident Fund Commissioner has not been fixed. It is further stated that the respondents had issued a provisional seniority list as on 1-1-93 for which he submitted representation. However, the respondents did not consider representation and issued a fresh seniority list through proceedings dt. 7-12-94. However, the seniority list issued through proceedings dt. 7-12-94 was in respect of the Asst. Provident Fund Commissioner as on 31-12-88. As the applicant reported for duty on 17-12-90, his name did not figure in the said seniority list.

15.(a) Learned counsel for the applicant has submitted his written arguments. Perused the same.

15.(b) The applicant is aggrieved by the action of the respon-

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dents in not considering his representation dt.9-2-93. He had submitted his representation against the provisional seniority list published on 20-1-93.

15.(c) However, during the pendency of the OA the respondents considered the said representation and informed the applicant by letter dt.19-6-97. The same communicated to the applicant on 14-7-97. In the said letter, the respondents informed the applicant that the seniority list has been prepared keeping in view the quota between the direct recruits and promotees and thus the seniority list of officers directly recruited and departmental promotees was based on the principle of Quota-Rota rule. Further they informed the applicant that the fixation of seniority has no connection with the date of joining.

15.(d) He has challenged the said letter ~~said~~ dt.19-6-97 by amending the prayer in the OA.

15.(e) In the first instance the respondents treated the calendar year 1991 as the recruitment year. It is on this ground they submit that during the year 1990-91 i.e. between 1-4-90 and 31-3-91 there were recruitments to the cadre of Asst.Provident Fund Commissioner both by promotion and by direct recruitment. The applicant was appointed on 14-12-1990. Some of the departmental candidates were promoted ~~as~~ earlier to him. It is his contention that the direct recruits must be placed above the departmental promotees.

15.(f) No doubt, the direct recruits must be placed above the departmental promotees; but however, it depends upon the cadre strength in a particular year.

15.(g) The applicant submits that there was no direct recruitment appointments prior to 1989. It is stated that the first direct recruitment was made in 1987. Between 1987 and 1989, there was no direct recruitment. If in such a situation there were only departmental promotees, then the respondents may verify the quota of the promotees prescribed in those years and in case the promotees were in excess of the prescribed quota, then those who were promoted in

- 6-B -

excess of the prescribed quota, then those who were promoted in excess of the quota must give way to the direct recruits. Merely because there was no recruitment between 1987 and 1989, it cannot be said that the Quota-Rota rule had broken down.

15.(h) As the respondents have considered the representation of the applicant against the provisional seniority list dt.20-1-93, the question of placing the applicant at a particular place has to be decided and the respondents have to take a decision in this regard. In view of the directions we are giving to the respondents, we do not feel persuaded to go into propriety of the letter dt.19-6-97/14-7-97.

15.(i) The respondents have not made clear the circumstances under which they issued another seniority list of officers who were in the cadre as on 31-12-1988. However, the applicant is not in any way affected by the publication of the said seniority list of the officers as on 31-12-1988, for, the applicant joined the service on 14-12-1990.

15.(j) The applicant relied upon the decision of the Hon'ble Supreme Court in the case of A.N.Pathak Vs. Secretary to Government, Ministry of Defence (reported in AIR 1987 SC 716). The Hon'ble Supreme Court in that case held that providing of slot system was not proper.

16. The applicant is working in the E.P.F.Organisation. In the case of N.Balasubrahmanyam Vs. Union of India reported in 1991 ATC (Vol.16) page-61, the Madras Bench of this Tribunal considered the validity of section-5-D(7)(a) of E.P.F.Act, in para-11,



the Bench has observed as follows :-

11. The applicants have also challenged the communication dt.14-10-88 and the validity of Section 5-D(7)(a) of the Act. Originally, under the EPF and Miscellaneous Provisions Act, before it is amended by Act 33 of 1988, Section 5-D(7) read as follows :-

The method of recruitment, salary and allowances, discipline and other conditions of service of other officers and employees of the Central Board shall be such as may be specified by the Central Board with the approval of the Central Government.

By the amendment Act 33 of 1988, Section 5-D(7) was amended as follows :-

7(a) The method of recruitment, salary and allowances, discipline and other conditions of service of Addl.CPF Commission, Dy.Provident Fund Commissioner, Regional Provident Fund Commissioner, Asst.Provident Fund Commissioner and other officers and employees of the Central Board staff shall be such as may be specified by the Central Board in accordance with the rules and others applicable to the officers and employees of the Central Government drawing corresponding scales of pay :

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid it shall obtain the prior approval of the Central Government.

(b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to Central Government whose decision thereon shall be final.

17. In case of Ashok Mahta & others Vs. Regional Provident Fund Commissioner & others (reported in 1993 (24) ATC (FB)493), the Full Bench of this Tribunal observed as follows :-

8. In the present set of cases, initial ad hoc promotions

were made and the incumbents continued in those posts until their services were regularised in accordance with the Rules. They have not pleaded that their ad hoc promotions were made to substantive posts or vacancies, deliberately in disregard of the rules. Nor is it their case that the incumbents continued on the posts for long periods of about 15 to 20 years. The orders of ad hoc promotions clearly indicate that they were made in the exigencies of service stating that the ad hoc promotion does not confer any rights for regular promotion. Hence, service rendered as ad hoc promotees before regularisation of their services in pursuance of selection by regular DPC in accordance with the rules cannot count for seniority.

9. In the light of our above discussion, we answer the questions referred to us in the context of the facts of these cases as follows :

(a) The officers promoted on the basis of seniority subject to the rejection of unfit and those promoted on the result of the competitive examination shall be treated as promotees.

Persons promoted by both the modes of promotion shall be included in a common seniority list.

Their inter se seniority has to be determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules.

Promotion by way of ad hoc or stopgap arrangement made due to administrative exigencies and not in accordance with rules cannot count for seniority.

Principle 'B' laid down by the Supreme Court in Direct Recruit Class II Engineering Officers' Association V. State of Maharashtra will apply as explained by the Supreme Court in Keshav Chandra Joshi v. Union of India only to cases where the initial appointment is made deliberately in disregard of the rules and the incumbent allowed to continue in the post for long periods of about 15 to 20 years without reversion till the date of regularisation of service in accordance with rules, there being power in the authority to relax the rules.

(b) The rota quota principle of seniority is not applicable for determining the seniority to the cadre of

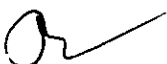
UDCs in these cases.

(c) The order of the Supreme Court in Mohinder Kumar case constitutes a binding precedent as held by the Full Bench of the Tribunal in R.D. Gupta case even after the judgment of the Supreme Court in the Direct Recruit Class II Engineering Officers Association case.

(d) As the correct principles for determining seniority in the cadre of UDCs were clarified by the Supreme Court in Mohinder Kumar case on 11-8-1987, and as cases in regard to seniority in the cadre of UDCs have been pending since long, it would not be just and proper to decline relief in regard to recasting of the seniority list on the ground that it would have far reaching and unsettling effect in managing the cadres of not only of the UDCs but also the posts in the higher grades.

18. Seniority is an important factor from the view of an employee. It discloses his position in the cadre and also his future promotional prospects. The respondents are expected to prepare the seniority list. The inter-se seniority between direct-recruits and promotees in the cadre of Asst. Provident Fund Commissioner is 1:1. Further the respondents considering the total strength ascertain whether in any of the year promotions were made in excess of the quota, then those promotees who were promoted in excess of the quota must give way to the direct recruits. Likewise in any of the year direct recruits were appointed in excess of the number to be appointed then those persons who were appointed in excess of the quota must give way for the promotees.

19. The applicant is governed by the EPF Extension of Seniority regulations, 1989.



20. Besides that the Ministry of Home Affairs, Govt. of India in OM No.9/11/55-APS dt.22-12-59 has issued certain guidelines. This OM was in force up to February, 1986.

21. Subsequently the Govt. of India issued guidelines in memo No.35014/2/80-Estt (D) dt.7-2-1986 regarding seniority. This OM is prospective in its application from 1-3-1986.

22. In the OM dt.22-12-59 the date of confirmation was linked with seniority. The question of linking the seniority with the date of confirmation ~~was~~ came up for consideration in the case of the Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra & others (1990(2)SLR 724 (SC)) wherein the Hon'ble Supreme Court clearly laid down that date of confirmation is not ^{the} criteria to determine the seniority and that the date of appointment is the basis for fixing the seniority.

23. On the lines of the decision of the Hon'ble Supreme Court Union of India issued OM No.20011/5/90/Estt (D) dt.4-11-92 de-linking the date of confirmation with seniority.

24. The said OM came up for consideration in OA 381/92 (Ch.V.Subba Rao Vs. Union of India & others) before this Bench. This Bench on 28-7-93 held that the provisor to para-4 of the OM dt.22-12-59 was against the equality clause.

25. Recently the Hon'ble Supreme Court in the case of P.W.D.Officials of the Punjab & Haryana observed as follows :-

It is well settled that in service matters, the question of seniority should not be re-opened after a lapse of reasonable period as that results in disturbing the settled

position which is not justifiable."

From the seniority lists produced by the respondents, they have finalised the seniority of some officers. The respondents while preparing seniority list shall not disturb the seniority of the Officers which ^{has already} become final.

26. With the above observations, we direct the respondents as under :-

- (a) The respondents are directed to prepare the provisional seniority list in the cadre of Asst. Provident Fund Commissioners ~~and~~ clearly identifying the applicant at a suitable place;
- (b) That they must ^{opportunity} give/ to the aggrieved officers to make the representation against the said provisional seniority list;
- (c) After carefully considering representa-^{tions} if any received, the respondents shall take a decision to finalise the seniority list.

27. Since preparing the seniority list as per the observations made herein above takes a considerable time, we feel it proper to direct the respondents to finalise the seniority within six months from the date of receipt of ^a copy of this order.

28. With the above directions, the OA is allowed leaving the parties to bear their own costs.


(B.S. JAI PARAME SHWAR)
Member (J)


(R. RANGARAJAN)
Member (A)

Dated: 7 August 98

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Copy to:

1. The Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
9th Floor, Mayur Bhavan, Cannaught Circus,
New Delhi.
2. One copy to Mr.N.Ram Mohan Rao, Advocate, CAT, Hyderabad.
3. One copy to Mr.R.N.Reddy, Addl.CGSC, CAT, Hyderabad.
4. One copy to HBSJP, M(J), CAT, Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.

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18/8/98

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II COURT

TYPED BY
COMPILED BY

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED:

7/8/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

C.A.NO.

635/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अपील
Central Administrative Tribunal
प्रेषण / DESPATCH

17 AUG 1998

हैदराबाद न्यायपीठ
HYDERABAD BENCH